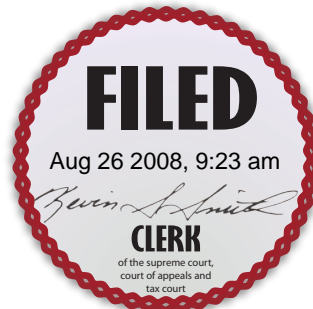


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

KIMBERLY A. JACKSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN O. CHEVRETTE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 37A03-0804-CR-182

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable John D. Potter, Judge
Cause No. 37C01-0703-FA-143

August 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After Kevin O. Chevrette pled guilty to one count of conspiracy to commit burglary while armed with a deadly weapon as a Class B felony, the trial court sentenced him to twenty years in the Department of Correction with three years suspended to probation. On appeal, he contends that his sentence is inappropriate in light of the nature of the offense and his character. Finding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

On January 12, 2007, Josh Conrad and Jake Waugh informed Chevrette of their plan to burglarize, while armed with guns, Robert Kosta's home located in Jasper County, Indiana. Chevrette agreed to drive and drop off Conrad and Waugh near Kosta's home and to pick them up after the burglary was completed. After being dropped off near Kosta's home, Conrad and Waugh made their way to Kosta's home and fired five bullets through Kosta's bedroom window while attempting to gain entry to the residence. At the time the shots were fired, Kosta and his girlfriend, Rhonda Vogt, were in bed asleep. Kosta was struck in the head with one of the bullets, which caused him to suffer a serious injury requiring extensive medical treatment, and the remaining bullets penetrated his headboard and mattress.

Thereafter, Conrad and Waugh fled the scene and went to another friend's home, where they washed their hands and cleaned their shoes. After failing to locate Conrad and Waugh and seeing emergency vehicles near Kosta's home, Chevrette drove back to his home. Although Chevrette was not present during the incident, he was aware that Conrad and Waugh had guns. Later, Chevrette picked up Conrad and Waugh from their

friend's home, and the three of them returned to Chevrette's home. While at Chevrette's home, Conrad and Waugh took showers and changed clothes. Thereafter, Waugh went home, and Conrad stayed the night.

On March 13, 2007, Chevrette was taken into custody near Conrad's home after certain individuals there claimed he had threatened them with a gun. Thereafter, the State charged Chevrette with Count I, conspiracy to commit burglary resulting in bodily injury as a Class A felony for the January 12, 2007, incident.¹ Later, the State charged Chevrette with Count II, conspiracy to commit burglary while armed with a deadly weapon as a Class B felony also for the January 12, 2007, incident.² That same day, Chevrette pled guilty pursuant to a plea agreement reached with the State. Under the terms of the plea agreement, Chevrette pled guilty to Count II and agreed to provide a "clean up" statement implicating his co-conspirators,³ and the State dismissed Count I. The agreement left sentencing open to the trial court.

In its sentencing order, the trial court identified as aggravators Chevrette's criminal history (including five misdemeanor convictions for conversion, consumption and possession of liquor in Illinois, operating while intoxicated, battery, and harassment), his drug abuse (including the use of heroin, crack, PCP, acid, opiates, mushrooms, cocaine, and continuous use of marijuana from age thirteen to age twenty-three), and the seriousness of the crime. As for mitigating circumstances, the trial court identified

¹ Ind. Code § 35-43-2-1(2)(A); Ind. Code § 35-41-5-2(a).

² I.C. § 35-43-2-1(1)(A); I.C. § 35-41-5-2(a).

³ Statements from Chevrette, Conrad, and Waugh suggest they had conspired together in other burglaries. *See* Appellant's App. p. 141-42, 146-47, 152-54.

Chevrette's acceptance of responsibility for his actions and expression of remorse that he showed at the time he entered his guilty plea, the fact that he has no felony convictions, and the hardship incarceration would create on his family. Finding that the aggravators outweighed the mitigators, the trial court sentenced Chevrette to an enhanced term of twenty years in the Department of Correction with three years suspended to probation. Chevrette now appeals.

Discussion and Decision

Chevrette's sole argument on appeal is that his twenty-year sentence with three years suspended to probation is inappropriate. Even where a trial court has not abused its discretion in imposing a sentence, the Indiana Constitution authorizes us to conduct independent appellate review and sentence revision, pursuant to the paradigm set forth by Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Indiana Appellate Rule 7(B) provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden rests with the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Chevrette's sentence is inappropriate.

As for the nature of the offense, Chevrette conspired with Conrad and Waugh to burglarize Kosta's home while armed with a deadly weapon. While Kosta and Vogt were sleeping, five shots were fired through their bedroom window. Kosta was struck in the

head with one of the bullets, and the remaining bullets penetrated his headboard and mattress. The horrific nature of this burglary resulted in significant physical injury to Kosta and has prevented him from feeling safe and secure in his home.

As for his character, Chevrette has an extensive adult criminal history, including five misdemeanor convictions for conversion, consumption and possession of liquor in Illinois, operating while intoxicated, battery, and harassment. Furthermore, statements from Chevrette, Conrad, and Waugh suggest they had conspired together in other burglaries. *See* Appellant's App. p. 141-42, 146-47, 152-54. In his eight years of adult life he has been charged with twelve misdemeanors and six felonies. Additionally, Chevrette's character is reflected negatively by his life-long drug abuse. Chevrette admits to abusing heroin, crack, PCP, acid, opiates, mushrooms, cocaine, and marijuana. In fact, he admits to smoking marijuana every day from age thirteen to age twenty-three. Although Chevrette accepted responsibility and expressed remorse, he also received a substantial benefit in return for his guilty plea, namely, the State dropped a Class A felony charge, which carries a maximum sentence of fifty years. Chevrette appears to have settled into a pattern of criminal behavior and has failed to persuade us that his twenty-year sentence with three years suspended to probation is inappropriate.

Affirmed.

KIRSCH, J., and CRONE, J., concur.